either no part of the mortgage debt was then due or the statement was made by way of *dictum*. See *Power v. Fire Ins. Co.* (1897) 69 Vt. 494, 38 Atl. 148; *Naquin v. Tex. Savings Asso.* (1902) 95 Tex. 313, 67 S. W. 908, 58 L. R. A. 711; *Fergus v. Wilmarth* (1886) 117 Ill. 543, 7 N. E. 508; *Boutelle v. Minneapolis City* (1894) 59 Minn. 493, 61 N. W. 554; *Brook & Berry v. Hubbard* (1901) 73 H. 122, 50 A. H. 802. Injunctions prohibitory of waste indicate the tendency of courts of equity to protect the security of a vendor or mortgagee. *Mutual Life Ins. Co. v. Bigler* (1880) 79 N. Y. 568. It is evident that the purpose of the contract in the principal case was to give to the defendant reasonable security for the mortgage debt. Compliance with the plaintiff's request would therefore work a manifest injustice.

R. L. S.

VENDOR AND PURCHASER—SALE OF TWO LOTS BY SEPARATE CONTRACTS—EFFECT OF MISREPRESENTATION AS TO ONE ON CONTRACT FOR THE OTHER.—A purchaser contracted for two lots from the same vendor, intending to use them together, but without communicating this intention to the vendor. There was a misrepresentation as to the second lot and the purchaser rescinded that contract. He then sought to rescind the contract for the first lot and the vendor asked for specific performance. *Held,* that neither rescission to the purchaser nor specific performance to the vendor would be granted. *Holliday v. Lockwood* [1917] 2 Ch. 47.

The case illustrates the doctrine that equity may consider certain facts in the formation of a contract as insufficient to establish a claim for rescission but sufficient to cause the court to refuse specific performance of the contract. *Mortlock v. Buller* (1804 Eng. Ch.) 10 Ves. 292; *Scott v. Alvarez* (C. A.) [1895] 2 Ch. 603; *Moffett, etc. Co. v. City of Rochester* (1898 C. C. A. 2d) 91 Fed. 28; and see Shaw, C. J. in *Western R. R. Co. v. Babcock* (Mass. 1843) 6 Met. 346, 352. The general rule is that the undisclosed intention or understanding of one contracting party does not govern the contract, but he is bound by the interpretation reasonably given to his words and acts by the other party. Professor A. L. Corbin, *Offer and Acceptance* (1917) 26 YALE LAW JOURNAL, 205; *Hodgdon v. Mansfield* (1888) 147 Mass. 304, 17 N. E. 544; *Jacob Johnson Fish Co. v. Hawley* (1912) 150 Wis. 578, 137 N. W. 773. In the principal case there were no such facts, in the absence of an express statement, as to lead the vendor to regard the contracts as interdependent. Under the general rule above stated they must therefore be regarded as separate contracts, and a misrepresentation as to one would not be ground for rescission as to the other. For a statement of facts held sufficient to "complicate" separate contracts, see *Casamajor v. Strode* (1834) 2 My. & K. 706, 725 and *Dyke v. Blake* (1837) 4 Bing. N. C. 463, 477. Specific performance, however, is not a matter of strict right, to be demanded on showing a valid legal contract, but will be refused where it would be inequitable to grant it, because of the harshness of the bargain, or the mistake of the defendant as to the terms or meaning of the contract and equity will leave the parties to their remedies at law. 2 Pomeroy, *Eq. Jurisp.* sec. 860, *Mortlock v. Buller, supra; Burkhalter v. Jones* (1884) 32 Kan. 5, 3 Pac. 559, *Kelly v. York Cliffs Co.* (1900) 94 Me. 374, 47 Atl. 898. Particularly is this so if the mistake was occasioned even remotely by the claimant's acts or omissions. 2 Pomeroy, *Eq. Jurisp.* sec. 860, *Denny v. Hancock* (1870, C. A.) L. R. 6 Ch. 1. No previous case seems to have called for the application of these doctrines to the same situation as that presented in the principal case but the decision, at least on the question of specific performance, seems a logical extension of the principles established by the cases above cited. On the question of rescission, some courts have gone a long way in granting relief even in the cases of unilateral mistake, and it is submitted that if the purchaser, as a ground for

rescission had relied on his mistaken belief that he was to get two lots to use together, whereas he only obtained one, instead of attempting to "complicate" the two contracts, so that the misrepresentation as to one would apply to both, he would have stood on stronger ground. 2 Pomeroy, *Eq. Jurisp.*, sec. 852; *Brown v. Lamphear* (1862) 35 Vt. 252; *Ward v. Yorba* (1899) 56 Pac. 58, 123 Cal. 447, but *contra, Diman v. R. R. Co.* (1858) 5 R. I. 130; *Moffett, etc. Co. v. City of Rochester, supra.*

L. F.

WILLS—ACCELERATION OF REMAINDERS—ELECTION OF WIDOW GIVEN LIFE ESTATE TO TAKE AGAINST THE WILL.—The testator devised his residuary estate in trust, part of the income to be used to provide an annuity for his sister-in-law, and the remaining income and, upon the annuitant's death, all the income, to be divided equally between his widow, son and daughter. At the widow's death, the principal was to be divided equally between the son and the daughter, the latter's share continuing in trust. The widow elected to take against the will. *Held,* that the widow's election terminated the trust for her life as though she had died, and accelerated the son's interest so as to entitle him, after a sum sufficient to provide for the annuitant had been set aside, to receive immediately one-half the residue. *In re Disston's Estate* (1917, Pa.) 101 Atl. 804.

The general rule is said to be that election to take against the will effects the same results as death. *Beideman v. Sparks* (1900, Ch.) 61 N. J. Eq. 226, 47 Atl. 811. *Baptist Female University v. Borden* (1903) 132 N. C. 476, 44 S. E. 47. The instant case cites former Pennsylvania cases as establishing this rule. See *Ferguson's Estate* (1890) 138 Pa. 208, 219, 20 Atl. 945, 946. *Vance's Estate* (1891) 141 Pa. 201, 213, 21 Atl. 643, 645. But investigation of the authorities shows that they proceeded on the ground that the only purpose of postponing the remainders was to protect the widow's interest. Election does not always lead to acceleration. The superior rights of a disappointed devisee of property passing to the widow by her election may prevent acceleration. *Latta v. Brown* (1896) 96 Tenn. 343, 34 S. W. 417. And where the widow's death is the time fixed for the payment of specific legacies, it has been held that no acceleration takes place. *Lovell v. Charlestown* (1891) 66 N. H. 584, 32 Atl. 160; *Jones v. Knappen* (1891) 63 Vt. 391, 22 Atl. 630. So, when the remainder is to a class which will not be determined till the widow's death. *Brandenburg v. Thorndike* (1885) 139 Mass. 102, 28 N. E. 575. On principle it would seem that acceleration should not be permitted when the rights of any other beneficiary will be prejudiced. The court in the principal case assumes that the trust was only for the widow's benefit and so puts the case within the general rule, without discussing the rights of the annuitant. It is submitted that nothing warranted such an assumption and the decision seems inconsistent with an earlier Pennsylvania case, cited by the court but not distinguished or overruled, where a similar trust for the widow's life was continued for the protection of an annuitant. *Young's Appeal* (1884) 108 Pa. 17, 22. See also *In re Wyllner's Estate* (1917) 65 Pa. Super. Ct. 396, 404.

G. L. K.

WORKMEN'S COMPENSATION ACT—WHO IS AN EMPLOYEE—PRESIDENT AND MAJORITY STOCKHOLDER OF CORPORATION.—The president of a corporation whose salary was $70 per week and who, as majority stockholder, received annual dividends of approximately $30,000, lost his leg as a result of an injury sustained while assisting in carrying lumber. *Held,* that he was not an employee within the meaning of the Act. *Bowne v. S. W. Bowne Co.* (1917) 221 N. Y. 28, 116 N. E. 364.